

Message Text

CONFIDENTIAL

PAGE 01 LONDON 07548 01 OF 05 071211Z
ACTION SS-25

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C O N F I D E N T I A L SECTION 01 OF 05 LONDON 07548

EXDIS

E.O. 11652: XGDS-1
TAGS: PFOR, RH, UK
SUBJECT: RHODESIA: CONSTITUTIONAL ISSUES

1. JOHNNY GRAHAM HAS GIVEN US THE FOLLOWING PAPER PRE-
PARED BY THE LEGAL DIVISION IN THE FCO. IT IS INTENDED
TO HIGHLIGHT THE CONSTITUTIONAL PROBLEMS THAT SHOULD BE
EXPLORED DURING THE JOINT BILATERAL CONSULTATIONS ON
RHODESIA.

2. BEGIN TEXT: FORM OF INDEPENDENCE CONSTITUTION AND
PREPARATIONS FOR ITS INTRODUCTION

PURPOSE OF PAPER

1. THIS PAPER IS CONCERNED WITH THE FORM AN INDE-
PENDENCE CONSTITUTION FOR A FUTURE "ZIMBABWE" MIGHT TAKE,
AND WITH THE PREPARATIONS FOR ITS INTRODUCTION.

MODE OF ENACTMENT

2. INDEPENDENCE CONSTITUTIONS FOR UNITED KINGDOM
DEPENDENCIES ARE USUALLY ENACTED BY ORDERS OF HER
MAJESTY IN COUNCIL MADE UNDER STATUTORY OR PREROGATIVE
POWERS. IN THIS CASE IT WOULD BE NECESSARY FOR HER
MAJESTY TO BE AUTHORIZED BY ACT OF PARLIAMENT TO MAKE THE
INDEPENDENCE CONSTITUTION BY ORDER IN COUNCIL.

THE INDEPENDENCE ACT

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PAGE 02 LONDON 07548 01 OF 05 071211Z

3. THIS ACT WOULD PROVIDE THAT HMG IN THE UNITED
KINGDOM WERE NO LONGER TO BE RESPONSIBLE FOR THE GOVERN-
MENT OF SOUTHERN RHODESIA AND (IF APPROPRIATE) THAT THE
COUNTRY WAS NO LONGER TO FORM PART OF HER MAJESTY'S
DOMINIONS. IT WOULD MAKE ANY NECESSARY CONSEQUENTIAL
AMENDMENTS TO UNITED KINGDOM LAW, INCLUDING THE REPEAL OF
THE SOUTHERN RHODESIA ACT 1965. AND WOULD ENABLE HER

MAJESTY IN COUNCIL TO ENACT THE INDEPENDENCE CONSTITUTION
CONSTITUTIONAL DISCUSSIONS

4. WHILE THE CONTENT OF THE INDEPENDENCE ACT CAN BE
ON STANDARD LINES AND SHOULD NOT PRESENT ANY DIFFICULTY,
THE CONTENT OF THE INDEPENDENCE CONSTITUTION WILL HAVE TO
BE WORKED OUT IN DISCUSSIONS BETWEEN THE VARIOUS INTER-
ESTED PARTIES AND THEIR ADVISERS, AND THESE DISCUSSIONS
WILL NECESSARILY TAKE SOME TIME. A CONSTITUTIONAL CON-
FERENCE OR SERIES OF CONFERENCES DOES NOT PROVIDE A
SATISFACTORY FORUM FOR DRAFTING A COMPLEX LEGAL INSTRU-
MENT AND THUS THE AIM OF THE CONSTITUTIONAL DISCUSSIONS
SHOULD BE TO PRODUCE A SCHEME FOR THE CONSTITUTION IN
PLAIN NON-TECHNICAL LANGUAGE, WHICH CAN FORM THE BASIS
FOR THE WORK OF THE DRAFTSMAN IN DRAWING UP THE CON-
STITUTION IN SUITABLE LEGAL FORM.

WHETHER MONARCHY OR REPUBLIC

5. IT IS ASSUMED THAT ZIMBABWE WILL BECOME A RE-
PUBLIC AT INDEPENDENCE.

HEAD OF STATE

6. THE HEAD OF STATE WILL PRESUMABLY BE A PRESIDENT.
HEAD OF THE EXECUTIVE GOVERNMENT

7. THE PRESIDENT WILL BE THE HEAD OF THE EXECUTIVE
GOVERNMENT. IN THE DISCHARGE OF HIS OFFICIAL FUNCTIONS
HE COULD BE REQUIRED TO ACT ON MINISTERIAL ADVICE OR HE
COULD BE VESTED WITH THE POWER TO MAKE EXECUTIVE DE-
CISIONS HIMSELF. IF THERE IS TO BE A CONSTITUTION WITH
AN "EXECUTIVE" PRESIDENT THE SCOPE OF THE PRESIDENT'S
POWERS WILL REQUIRE CAREFUL CONSIDERATION.

PRIME MINISTER

CONFIDENTIAL

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PAGE 03 LONDON 07548 01 OF 05 071211Z

8. THE PRESIDENT, ACTING IN HIS OWN DELIBERATE JUDG-
MENT, WILL APPOINT AS PRIME MINISTER THE MEMBER OF THE
HOUSE OF ASSEMBLY WHO APPEARS TO HIM BEST ABLE TO COMMAND
THE SUPPORT OF A MAJORITY OF MEMBERS OF THAT HOUSE, AND
WILL DISMISS HIM IF HE LOSES THAT SUPPORT AND FAILS
EITHER TO RESIGN OR TO GO TO THE COUNTRY AT A GENERAL
ELECTION.

COUNCIL OF MINISTERS

9. THIS WILL CONSIST OF THE PRIME MINISTER AND THE
OTHER MINISTERS. THE MINISTERS OTHER THAN THE PRIME
MINISTER WILL BE APPOINTED AND REMOVED BY THE PRESIDENT,
ON THE ADVICE OF THE PRIME MINISTER, FROM AMONG THE
MEMBERS OF THE SENATE OR HOUSE OF ASSEMBLY.
ASSISTANT MINISTERS

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PAGE 01 LONDON 07548 02 OF 05 071224Z
ACTION SS-25

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C O N F I D E N T I A L SECTION 02 OF 05 LONDON 07548

EXDIS

10. THESE WILL BE APPOINTED AND REMOVED IN THE SAME
WAY AS THE MINISTERS, BUT WILL NOT BE MEMBERS OF THE
COUNCIL OF MINISTERS.

MINISTERIAL PORTFOLIOS

11. THESE WILL BE ALLOCATED BY THE PRESIDENT ON THE
ADVICE OF THE PRIME MINISTER.

INDIVIDUAL AND COLLECTIVE RESPONSIBILITY

12. EACH MINISTER WILL BE INDIVIDUALLY RESPONSIBLE
FOR MATTERS WITHIN HIS PORTFOLIO AND THE COUNCIL OF
MINISTERS WILL BE COLLECTIVELY RESPONSIBLE FOR ADVICE
GIVEN TO THE PRESIDENT BY OR UNDER THE AUTHORITY OF THE
COUNCIL AND FOR THINGS DONE BY OR UNDER THE AUTHORITY OF
ANY MINISTER.

ELECTION OF A PRESIDENT

13. THE PRESIDENT COULD BE ELECTED BY THE HOUSE OF
ASSEMBLY OR, IF THERE IS A SENATE, BY BOTH HOUSES OF
PARLIAMENT. IF HOWEVER THE PRESIDENT IS TO HAVE SUB-
STANTIAL EXECUTIVE POWERS, THEN IT MIGHT BE MORE APPRO-
PRIATE FOR HIM TO BE ELECTED BY THE WHOLE ELECTORATE.

TENURE OF OFFICE OF PRESIDENT

14. THE PRESIDENT WOULD HOLD OFFICE EITHER FOR THE
DURATION OF A PARLIAMENT, IF THE PROCESS OF HIS ELECTION
WAS COMBINED WITH A GENERAL ELECTION, OR, IF SEPARATELY
ELECTED, FOR A FIXED TERM OF YEARS. APPROPRIATE PRO-
VISION WOULD NEED TO BE MADE FOR REMOVING THE PRESIDENT

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PAGE 02 LONDON 07548 02 OF 05 071224Z

FROM OFFICE ON THE GROUNDS OF MISCONDUCT OR INCAPACITY.
ATTORNEY-GENERAL AND DPP

15. THE ATTORNEY-GENERAL, WHO WOULD BE THE PRINCIPAL LEGAL ADVISER TO THE GOVERNMENT, WOULD BE A MINISTER. IN ORDER TO INSULATE THIS MATTER FROM POLITICS, RESPONSIBILITY FOR PROSECUTIONS WOULD VEST IN A DIRECTOR OF PUBLIC PROSECUTIONS, WHO WOULD BE AN OFFICIAL SUBJECT TO REMOVAL FROM OFFICE ONLY FOR INCAPACITY OR MISCONDUCT, AND NOT SUBJECT TO DIRECTION IN THE DISCHARGE OF HIS FUNCTIONS.

POWER OF PARDON

16. THESE WOULD BE EXERCISABLE BY THE PRESIDENT ON THE ADVICE OF A MINISTER, WHO WOULD ACT IN HIS OWN JUDGMENT AFTER CONSULTATION WITH AN ADVISORY COMMITTEE OF AN INDEPENDENT CHARACTER.

MINISTERS

17. MINISTRIES WOULD BE UNDER THE SUPERVISION, SUBJECT TO THE GENERAL DIRECTION AND CONTROL OF A MINISTER, OF A PERMANENT OFFICIAL.

COMPOSITION OF PARLIAMENT

18. PARLIAMENT WOULD CONSIST OF THE PRESIDENT AND EITHER ONE OR TWO LEGISLATIVE HOUSES. THE ONE COULD BE CALLED THE HOUSE OF ASSEMBLY AND THE SECOND (IF ANY) THE SENATE, BUT THERE IS NO HARD-AND-FAST RULE ABOUT NOMENCLATURE.

THE HOUSE OF ASSEMBLY

19. THE MEMBERS OF THIS HOUSE WOULD PRESUMABLY BE ELECTED, AND WOULD THEMSELVES ELECT ONE OF THEIR NUMBER TO BE SPEAKER OF THE HOUSE AND PRESIDE OVER THEIR DELIBERATIONS.

THE SENATE

20. THE MEMBERS OF THE SENATE COULD BE ELECTED OR APPOINTED. THE METHOD OF SELECTION NEED NOT BE UNIFORM FOR ALL THE SENATORS. THEY WOULD THEMSELVES ELECT ONE OF THEIR NUMBER TO BE PRESIDENT OF THE HOUSE AND PRESIDE OVER THEIR DELIBERATIONS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 LONDON 07548 02 OF 05 071224Z

QUALIFICATIONS FOR EACH HOUSE

21. THE QUALIFICATIONS AND DISQUALIFICATIONS FOR ELECTION TO THE HOUSE OF ASSEMBLY AND FOR ELECTION OR APPOINTMENT TO THE SENATE WOULD NEED TO BE PRESCRIBED. QUALIFICATION OF ELECTORS

22. THE QUALIFICATIONS AND DISQUALIFICATIONS FOR VOTING IN PARLIAMENTARY AND PRESIDENTIAL ELECTIONS WOULD NEED TO BE PRESCRIBED.

CONSTITUENCIES

23. WHERE ELECTIONS ARE TO BE HELD ON THE BASIS OF CONSTITUENCIES, MACHINERY IS REQUIRED FOR THEIR DELIMITATION.

ELECTORAL BOUNDARIES COMMISSION

24. IT IS DESIRABLE THAT ELECTORAL BOUNDARIES SHOULD

BE DELIMITED, AND PERIODICALLY REVIEWED, BY AN INDEPENDENT AND IMPARTIAL COMMISSION.

ELECTORAL SUPERVISORY COMMISSION

25. IT MAY ALSO BE THOUGHT DESIRABLE TO HAVE AN INDEPENDENT AND IMPARTIAL COMMISSION RESPONSIBLE FOR THE DIRECTION AND SUPERVISION OF REGISTRATION OF ELECTORS AND THE CONDUCT OF ELECTIONS.

DETERMINATION OF ELECTORAL QUESTIONS

26. ANY QUESTION WHETHER A PERSON HAD BEEN VALIDLY

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PAGE 01 LONDON 07548 03 OF 05 071220Z

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W

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TO SECSTATE WASHDC IMMEDIATE 3607

C O N F I D E N T I A L SECTION 03 OF 05 LONDON 07548

EXDIS

ELECTED TO THE HOUSE OF ASSEMBLY OR TO THE SENATE (IF ANY) OR, BEING A MEMBER, HAD VACATED HIS SEAT THEREIN WOULD BE DECIDED BY THE HIGH COURT.

POWERS OF PARLIAMENT

27. PARLIAMENT WOULD HAVE POWER TO MAKE LAWS FOR THE PEACE, ORDER AND GOOD GOVERNMENT OF ZIMBABWE. THE POWER WOULD BE EXERCISED BY THE PASSAGE OF BILLS THROUGH THE HOUSE OF ASSEMBLY AND THE SENATE (IF ANY) AND THE GIVING OF ASSENT THERETO BY THE PRESIDENT. THE LEGISLATIVE POWER OF PARLIAMENT WOULD BE UNFETTERED, EXCEPT THAT ITS LAWS WOULD HAVE TO BE CONSISTENT WITH THE PROVISIONS OF THE CONSTITUTION, INCLUDING THE BILL OF RIGHTS.

ASSENT TO BILLS

28. THE PRESIDENT WOULD ASSENT TO BILLS BUT MIGHT HAVE POWER TO REFUSE HIS ASSENT TO A PARTICULAR BILL, IN WHICH CASE IT MIGHT LAPSE UNLESS RE-PRESENTED TO HIM FOR ASSENT FOLLOWING A TWO-THIRDS MAJORITY VOTE IN THE HOUSE OF ASSEMBLY, WHEN HE WOULD HAVE TO ASSENT UNLESS HE DISSOLVED PARLIAMENT.

RELATIONSHIP BETWEEN LEGISLATIVE HOUSES

29. IF THERE ARE TO BE TWO LEGISLATIVE HOUSES, IT WILL BE NECESSARY TO DECIDE WHETHER, AND IF SO, WHAT LIMITATIONS SHOULD BE PLACED ON THE POWERS OF THE SENATE. IT MAY NOT BE APPROPRIATE FOR THE SENATE TO INITIATE CERTAIN FINANCIAL MEASURES (BILLS FOR WHICH WOULD
CONFIDENTIAL

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PAGE 02 LONDON 07548 03 OF 05 071220Z

ORIGINATE IN THE HOUSE OF ASSEMBLY) OR TO HAVE THE POWER TO AMEND OR REJECT FINANCIAL BILLS. SO FAR AS OTHER BILLS ARE CONCERNED, THE SENATE MIGHT HAVE A DELAYING POWER OF, SAY, SIX OR TWELVE MONTHS, BUT MIGHT NOT BE ABLE TO AMEND OR REJECT SUCH A BILL IF IT IS PASSED AGAIN BY THE HOUSE OF REPRESENTATIVES IN THE NEXT SESSION AFTER THE ONE IT WAS FIRST PASSED IN BY THE HOUSE OF ASSEMBLY BUT UNACCEPTABLY AMENDED, OR REJECTED, BY THE SENATE. SESSIONS OF PARLIAMENT

30. SESSIONS WOULD BEGIN IN SUCH PLACE AND AT SUCH TIME (NOT BEING LATER THAN, SAY, 12 MONTHS FROM THE END OF THE PREVIOUS SESSION) AS THE PRESIDENT MIGHT APPOINT. PROROGATION AND DISSOLUTION OF PARLIAMENT

31. THE PRESIDENT WOULD HAVE POWER TO PROROGUE OR DISSOLVE PARLIAMENT. IF NOT SOONER DISSOLVED, PARLIAMENT SHOULD STAND DISSOLVED AT THE EXPIRATION OF, SAY FIVE YEARS FROM ITS FIRST SITTING AFTER A DISSOLUTION UNLESS, IN TIME OF WAR, IT EXTENDED ITS OWN LIFE FOR A PERIOD OR PERIODS OF TWELVE MONTHS AT A TIME.

AMENDMENT OF THE CONSTITUTION

32. PARLIAMENT WILL HAVE POWER TO ALTER THE CONSTITUTION BUT AS THE CONSTITUTION WILL BE THE FUNDAMENTAL LAW OF ZIMBABWE AND WILL GIVE EFFECT TO AGREEMENTS REACHED IN THE COURSE OF THE PRE-INDEPENDENCE NEGOTIATIONS, IT IS IMPORTANT THAT THE MAJOR PROVISIONS OF THE CONSTITUTION SHOULD BE "ENTRENCHED", THAT IS TO SAY, SUSCEPTIBLE OF AMENDMENT ONLY BY SPECIAL PROCEDURES MORE RIGOROUS THAN THE MODE OF ENACTING ORDINARY LAWS--FOR EXAMPLE, SPECIAL MAJORITIES IN THE HOUSE OF ASSEMBLY AND THE SENATE (IF ANY) COULD BE SPECIFIED OR A REFERENDUM AMONG THE WHOLE ELECTORATE REQUIRED.

THE EXECUTIVE AND THE LEGISLATURE

33. THE FOREGOING PARAGRAPHS 6 - 31 DEAL IN SOME DETAIL WITH THESE MATTERS, SINCE THEY ARE ESSENTIAL FEATURES OF ANY CONSTITUTION. THE FOLLOWING PARAGRAPHS DEAL MORE BRIEFLY WITH OTHER MATTERS FOR WHICH IT IS
CONFIDENTIAL

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PAGE 03 LONDON 07548 03 OF 05 071220Z

DESIRABLE TO MAKE CONSTITUTIONAL PROVISION.

BILL OF RIGHTS

34. IT IS DESIRABLE THAT THE CONSTITUTION SHOULD
CONTAIN A BILL OF RIGHTS, THAT IS TO SAY, A CHAPTER DE-
SIGNATED TO PROTECT THE FUNDAMENTAL RIGHTS AND FREEDOMS
OF THE INDIVIDUAL, DEALING WITH SUCH MATTERS AS -

- A) DEPRIVATION OF LIFE
 - B) INHUMAN TREATMENT
 - C) SLAVERY AND FORCED LABOR
 - D) DEPRIVATION OF PERSONAL LIBERTY
 - E) DETERMINATION OF CIVIL RIGHTS AND TRIAL OF
CRIMINAL OFFENCES
 - F) PRIVATE AND FAMILY LIFE
 - G) FREEDOM OF CONSCIENCE
 - H) FREEDOM OF EXPRESSION
 - I) PEACEFUL ASSEMBLY AND ASSOCIATION
 - J) FREEDOM OF MOVEMENT
 - K) FREEDOM FROM DISCRIMINATION
 - L) COMPULSORY ACQUISITION OF PROPERTY
- UNDER THE CHAPTER THE HIGH COURT WOULD HAVE SPECIAL JURIS-
DICTION TO ENFORCE THE FUNDAMENTAL RIGHTS AND FREEDOMS.
IT MIGHT ALSO BE DESIRABLE TO SET UP AN INDEPENDENT AND
IMPARTIAL TRIBUNAL TO SCRUTINIZE DRAFT LEGISLATION AND

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PAGE 01 LONDON 07548 04 OF 05 071259Z
ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
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C O N F I D E N T I A L SECTION 04 OF 05 LONDON 07548

EXDIS

REPORT WHETHER, IF ENACTED, IT WOULD CONTRAVENE THE
BILL OF RIGHTS.
CITIZENSHIP

35. IT IS DESIRABLE THAT THE CONSTITUTION SHOULD
CONTAIN A CHAPTER SETTING OUT THE MAIN PROVISIONS

GOVERNING THE CITIZENSHIP OF ZIMBABWE.

THE JUDICIARY

36. IN VIEW OF THE IMPORTANCE OF SECURING THE INDEPENDENCE OF THE JUDICIARY, IT IS IMPORTANT THAT THE CONSTITUTION SHOULD CONTAIN A CHAPTER GOVERNING THE APPOINTMENT, TENURE OF OFFICE AND REMUNERATION OF THE SENIOR JUDICIARY, WHOSE PAY AND RETIRING AGE SHOULD BE FIXED BY LAW AND WHO SHOULD NOT BE LIABLE TO DISMISSAL EXCEPT FOR INCAPACITY OR MISCONDUCT ESTABLISHED TO THE SATISFACTION OF AN INDEPENDENT AND IMPARTIAL TRIBUNAL.

THE COURTS

37. IT WOULD ALSO BE POSSIBLE TO PROVIDE IN THE CONSTITUTION FOR THE STRUCTURE, POWERS AND JURISDICTION OF THE SUPERIOR COURTS, INCLUDING THE APPELLATE COURTS.

APPEALS TO THE JUDICIAL COMMITTEE

38. IF APPEALS ARE TO LIE TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (ASSUMING ZIMBABWE STAYS PART OF HER MAJESTY'S DOMINIONS) THEN PROVISION TO THAT EFFECT SHOULD BE INCLUDED IN THE CONSTITUTION.

FINANCE

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PAGE 02 LONDON 07548 04 OF 05 071259Z

39. IT MAY BE DESIRABLE TO INCLUDE IN THE CONSTITUTION PROVISIONS RELATING TO PUBLIC FINANCE, INCLUDING SUCH MATTERS AS A CONSOLIDATED REVENUE FUND, A CONTINGENCIES FUND, REMUNERATION OF THE PRESIDENT AND CERTAIN OTHER OFFICERS, AUDIT OF PUBLIC ACCOUNTS AND THE PUBLIC DEBT.

THE PUBLIC SERVICE

40. IN VIEW OF THE DESIRABILITY OF PRESERVING THE NON-POLITICAL CHARACTER OF THE PUBLIC SERVICE, IT IS DESIRABLE THAT CIVIL SERVANTS AND POLICE SHOULD, AS REGARDS THEIR APPOINTMENT, DISCIPLINARY CONTROL AND REMOVAL FROM OFFICE, BE SUBJECT TO AN INDEPENDENT AND IMPARTIAL COMMISSION OR COMMISSIONS. SIMILARLY MAGISTRATES AND JUDICIAL OFFICERS SUCH AS REGISTRARS SHOULD BE SUBJECT TO AN INDEPENDENT AND IMPARTIAL JUDICIAL SERVICE COMMISSION. SPECIAL PROVISION MAY BE APPROPRIATE IN RELATION TO THE APPOINTMENT OF PERMANENT SECRETARIES, AMBASSADORS AND CLERKS OF PARLIAMENT.

PROTECTION OF PENSION RIGHTS

41. IT IS IMPORTANT THAT THE CONSTITUTION SHOULD CONTAIN A PROVISION FOR THE PROTECTION OF THE PENSION RIGHTS OF SERVING AND RETIRED OFFICERS AND THEIR DEPENDENTS. THE CONCURRENCE OF THE APPROPRIATE SERVICE COMMISSION SHOULD BE OBTAINED BEFORE ANY PENSIONS BENEFITS ARE WITHHELD, REDUCED OR SUSPENDED. IT MAY BE DESIRABLE TO ESTABLISH AN APPEALS BOARD TO DEAL WITH APPEALS IN RELATION TO DECISIONS AFFECTING PENSIONS BENEFITS.

MEASURES TO BE TAKEN IN ADVANCE

42. IF THE INDEPENDENCE CONSTITUTION IS TO COME FULLY INTO OPERATION ON INDEPENDENCE DAY, IT IS ESSENTIAL THAT CERTAIN STEPS SHOULD BE TAKEN BEFOREHAND, NAMELY:
A) THE DELIMITATION OF PARLIAMENTARY CONSTITUENCIES
B) THE REGISTRATION OF PARLIAMENTARY ELECTORS
THE PROCESSES WILL TAKE SOME MONTHS, PROBABLY SIX AT LEAST, AND OF COURSE THEY CANNOT BE BEGUN UNTIL FIRM DECISIONS HAVE BEEN TAKEN CONCERNING THE NUMBER OF CON-
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 LONDON 07548 04 OF 05 071259Z

STITUENCIES, THE CRITERIA FOR DRAWING UP CONSTITUENCIES, THE APPROPRIATE BODY TO BE RESPONSIBLE FOR DRAWING UP CONSTITUENCIES, AND THE QUALIFICATIONS AND DISQUALIFICATIONS FOR ELECTORS.

INTERIM ADMINISTRATION

43. IT MAY BE DESIRABLE TO ESTABLISH AN INTERIM ADMINISTRATION TO GOVERN THE COUNTRY WHILE THE ELECTORAL PREPARATIONS ARE IN TRAIN. IT COULD PROBABLY BE ESTABLISHED BY ORDER IN COUNCIL UNDER THE SOUTHERN RHODESIA ACT 1965. SUCH AN ORDER IN COUNCIL WOULD IN EFFECT PROVIDE AN INTERIM CONSTITUTION, WHICH MIGHT ANTICIPATE SOME OF THE FEATURES OF THE INDEPENDENCE CONSTITUTION. IT COULD NOT OF COURSE PROVIDE FOR A REPUBLIC, NOR COULD IT PROVIDE FOR AN ELECTED LEGISLATURE. EXECUTIVE AND LEGISLATIVE FUNCTIONS WOULD HAVE TO BE VESTED IN ONE OR MORE COUNCILS CONSISTING OF NOMINATED MEMBERS. HMG MIGHT BE ABLE TO PROVIDE A COMMISSIONER TO HEAD THE ADMINISTRATION, AND EXERCISE CERTAIN POWERS.
VALIDATION OF PAST TRANSACTIONS

44. IN ORDER TO PREVENT RESULTING CHAOS, IT WOULD BE DESIRABLE FOR THE INTERIM CONSTITUTION TO VALIDATE TRANSACTIONS OCCURRING DURING THE LIFE OF THE ILLEGAL REGIME.

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PAGE 01 LONDON 07548 05 OF 05 071234Z
ACTION SS-25

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C O N F I D E N T I A L SECTION 05 OF 05 LONDON 07548

EXDIS

INDEMNIFICATION

45. IT WOULD ALSO BE DESIRABLE FOR THE INTERIM CONSTITUTION TO INDEMNIFY MEMBERS AND SUPPORTERS OF THE ILLEGAL REGIME, AND ALSO THOSE WHO STRUGGLED AGAINST THE ILLEGAL REGIME, AGAINST ANY CIVIL OR CRIMINAL PROCEEDINGS EXISTING LAWS

46. IN ORDER TO PROVIDE AN ORDERLY TRANSITION, IT SEEMS DESIRABLE THAT THE INTERIM CONSTITUTION SHOULD PROVIDE THAT THE PURPORTED LAWS OF THE ILLEGAL REGIME ARE TO CONTINUE AS IF VALIDLY MADE UNTIL REPEALED OR AMENDED BY THE INTERIM ADMINISTRATION, PROVIDED THEY ARE NOT INCONSISTENT WITH THE INTERIM CONSTITUTION OR OTHERWISE OBJECTIONABLE FOR VARIOUS REASONS.

PUBLIC OFFICERS

47. IN GENERAL, THESE WILL REMAIN IN POST UNDER THE INTERIM ADMINISTRATION, BUT THERE WILL NEED TO BE APPROPRIATE MACHINERY UNDER WHICH INDIVIDUALS MAY BE COMPULSORILY RETIRED EITHER TO MAKE WAY FOR SUITABLY-QUALIFIED AFRICANS OR BECAUSE THEY CANNOT ACCOMMODATE TO THE INTERIM ADMINISTRATION. IT IS DESIRABLE THAT DECISIONS ON THESE MATTERS SHOULD BE TAKEN BY AN INDEPENDENT AND IMPARTIAL SERVICE COMMISSION. THE JUDGES OF THE HIGH COURT MAY NEED SPECIAL TREATMENT IN VIEW OF THEIR PROTECTED TENURE. END TEXT

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PAGE 02 LONDON 07548 05 OF 05 071234Z

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